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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

Public redacted version of "Prosecution's Response to Mr Gbagbo's request for interim release (ICC-02-/11-01/15-1130-Conf)", 21 February 2018, ICC-02/11-01/15-1132-Conf

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Introduction

1. Mr Gbagbo's custody in detention continues to be necessary and is entirely compatible with his health. The Defence's Request¹ should be dismissed because it fails to demonstrate any change in circumstances justifying Mr Gbagbo's release.
2. On 25 September 2017, the Trial Chamber, by majority—the Presiding Judge dissenting—issued its most recent decision under article 60(3) of the Statute² and ordered that Mr Gbagbo should remain in prison.³ The Trial Chamber found that Mr Gbagbo's detention is (i) compatible with his health⁴ and (ii) necessary to ensure his appearance at trial and that he does not obstruct or endanger the proceedings under articles 58(1)(b)(i) and (ii).⁵
3. On 24 November and 18 December 2017,⁶ the Medical Officer of the ICC Detention Centre, [REDACTED], reported that Mr Gbagbo's health is stable, and noted that he receives maximum and optimum treatment in relation to his ailments, as well as “rehabilitation”.⁷
4. In its Request, the Defence asks the Trial Chamber to release Mr Gbagbo for medical reasons.⁸ However, it fails to show that the Accused's health has changed and rendered his detention either incompatible with his medical condition or unnecessary under articles 60(2) and 58(1)(b).
5. The Prosecution submits that Mr Gbagbo should remain in detention as there are no changed circumstances warranting a modification of the Trial Chamber's assessment in its 11th Decision under article 60(3).

¹ ICC-02/11-01/15-1130 (“Request”).

² See ICC-02/11-01/15-1038 (“11th Decision”).

³ 11th Decision, p. 31.

⁴ 11th Decision, paras. 42-43, 74.

⁵ See 11th Decision, paras. 18-32, 44-47.

⁶ ICC-02/11-01/15-1130-Conf-Anx1 (“November Medical Report”); ICC-02/11-01/15-1130-Conf-Anx2 (“December Medical Report”), collectively “Medical Reports”.

⁷ November Medical Report, para. 6; December Medical Report, para. 1.

⁸ Request, p. 22.

Confidentiality

6. The Prosecution files this submission as confidential pursuant to regulation 23bis(1) of the Regulations of the Court (“Regulations”), as it contains information that is not publicly available. The Prosecution will file a public version as soon as practicable.

Submissions

7. Laurent Gbagbo’s detention is compatible with his age and health, and necessary under articles 58(1)(b)(i) and (ii) and 60(2).

1. Mr Gbagbo’s health condition is stable and remains compatible with his detention

8. In its 11th Decision, issued less than four months ago, the Trial Chamber found that Mr Gbagbo’s detention remains compatible with his age and health.⁹

There is no evidence that the conditions of the detention of Mr Gbagbo are incompatible with his age and health. In fact, as noted above, within the Detention Centre and with outside medical specialists in The Netherlands, Mr Gbagbo is receiving optimal treatment for his physical and psychological conditions in a safe, humane, and appropriately secure environment for an aging inmate. In fact, despite his age and detention, some of his physical and psychological ailments have improved in the past years.

Bearing in mind Mr Gbagbo’s current health condition and the quality of the medical care available at the Detention Centre the Chamber considers that the detention of Mr Gbagbo is reasonable and appropriate.¹⁰

9. Subsequently, [REDACTED] issued two new Medical Reports, both confirming that Mr Gbagbo’s health has neither changed nor deteriorated since the time of the 11th Decision.¹¹
10. The Medical Reports noted Mr Gbagbo’s fragility due to his age as well as his vulnerability related to his *mild* accelerated ageing process.¹² In particular,

⁹ 11th Decision, paras. 33-43.

¹⁰ 11th Decision, paras. 42-43.

¹¹ See November Medical Report; December Medical Report.

¹² November Medical Report, paras. 2-3.

[REDACTED] expressed some worries with Mr Gbagbo's [REDACTED]¹³ [REDACTED].¹⁴ Mr Gbagbo's lack of sleep and subsequent fatigue is therefore also the result of his [REDACTED]¹⁵ and not of his detention condition. [REDACTED] further noted that [REDACTED].¹⁶

11. [REDACTED] ultimately concluded that Mr Gbagbo's health condition has not deteriorated and has remained stable since last year.¹⁷ He observed that the ICC Medical Service "continues monitoring him closely",¹⁸ and is providing him with "maximum and optimum treatment in relation to his ailments and rehabilitation".¹⁹ In other words, the Medical Reports confirm that there are no changes warranting Mr Gbagbo's release under article 60(3).

12. Rather than offering fresh evidence that Mr Gbagbo's health condition deteriorated since the 11th Decision and is now incompatible with his detention, the Defence either misrepresents or attempts to discredit the Medical Reports with unsupported arguments.

(a) The Defence misrepresents the Medical Reports

13. [REDACTED].²⁰ In the abstract, as he did before,²¹ [REDACTED] defines the term vulnerability "as a process which can be characterised by an accumulation of physical, functional, psychological and/or social shortcomings in daily performance. Increase of vulnerability will increase the risk of negative health status outcome (diminished functioning, hospital admissions and even death)".²²

¹³ November Medical Report, para. 4. See also November Medical Report, paras. 5-6; December Medical Report, paras. 3-4.

¹⁴ See for instance the Medical Report of 26 August 2016 (ICC-02/11-01/15-657-Conf-AnxII), para. 1; Medical Report of 4 September 2017 (ICC-02/11-01/15-1018-Conf-AnxI), para. 3. Both reports pre-date the 11th Decision. The Medical Report of 4 September in particular noticed that "[REDACTED] his fatigue diminished significantly. It has to be taken into account that the fatigue Mr. Gbagbo experiences has multiple causes though."

¹⁵ November Medical Report paras. 6, 8.

¹⁶ November Medical Report, para. 6. See also December Medical Report, para. 3(d).

¹⁷ November Medical Report, paras. 1 and 6. See also December Medical Report, para. 1.

¹⁸ November Medical Report, para. 7. See also December Medical Report, p. 2.

¹⁹ November Medical Report, para. 6. See also December Medical Report, para. 1.

²⁰ *Contra* Request, paras. 2-4. See also paras. 9 and 73.

²¹ See for instance the identical language adopted prior to the 11th Decision in the Medical Report of 4 September 2017 (ICC-02/11-01/15-1018-Conf-AnxI), para. 2.

²² November Medical Report, para. 2.

14. Contrary to the Defence's misrepresentation, [REDACTED] did not tend to suggest that [REDACTED], nor did he suggest in any way that Mr Gbagbo's health has deteriorated since the 11th Decision.²³ Quite the contrary, [REDACTED] expressly concluded that, although fragile, Mr Gbagbo's health condition is stable and *not* deteriorating.²⁴

(b) The Defence's attempt to discredit [REDACTED] and his Medical Reports is unsupported

15. The Defence attempts to discredit [REDACTED] and his Medical Reports.²⁵ Instead of providing fresh evidence to *show* that Mr Gbagbo's health has deteriorated, the Defence instead merely speculates about [REDACTED] professionalism and motives.

16. The Defence accuses [REDACTED] of lacking scientific rigour ("*manque de rigueur scientifique*").²⁶ It submits that he overlooked Mr Gbagbo's alleged health deterioration, and took no action in this respect,²⁷ and suggests that he drafted his Medical Reports to make the Trial Chamber believe ("*faire croire*") that the treatments provided were adequate²⁸ in order to conceal ("*couvrir*") his alleged mistakes and "*limiter sa responsabilité*".²⁹

17. These grave accusations are wholly speculative. The Defence does not provide support—let alone scientific evidence—to show that the Medical Reports are erroneous and that [REDACTED] intended to mislead the Trial Chamber.

18. For instance, from at least November 2015 Mr Gbagbo [REDACTED].³⁰ Consequently and contrary to the Defence's misleading submissions,³¹ it is not

²³ *Contra* Request, paras. 2-4. *See also* paras. 9 and 73.

²⁴ November Medical Report, para. 6. *See also* December Medical Report, para. 1.

²⁵ Request, paras. 8-84.

²⁶ Request, para. 19. *See also* paras. 77-78.

²⁷ Request, paras. 15-16, 18.

²⁸ Request, para. 19.

²⁹ Request, para. 17. *See also* paras. 8, 18 and 74.

³⁰ [REDACTED].

³¹ *See* Request, paras. 5, 13, 16, 18, 20, 22, 29, 31, 33, 37, 38, 39, 40, 42, 67, 77 and 79.

surprising that [REDACTED] does not discuss [REDACTED] in his Medical Reports.

19. Further, the Defence's submission that the November Medical Report is only indicative of the Medical Service's inability to treat Mr Gbagbo³² is based on the Defence's understanding of outdated reports, including from 2012 and 2014,³³ that have already been considered by the Trial Chamber.³⁴ They certainly do not show any *new* circumstance warranting a modification of Trial Chamber's 11th Decision.

2. Detention remains necessary under articles 58(1)(b)(i) and (ii) and 60(2)

20. In its 11th Decision, the Trial Chamber found that the detention remains necessary to ensure Mr Gbagbo's appearance at trial and to ensure that he does not obstruct or endanger the proceedings under articles 58(1)(b)(i) and (ii).³⁵ Mr Gbagbo's medical condition does not reduce such risk because it would not prevent him from absconding or obstructing the court proceedings.³⁶

21. The situation has not changed since the Trial Chamber's 11th Decision. The Defence neither addresses these risks nor attempts to show a change in circumstances warranting a modification of the Trial Chamber's prior risk assessment.

Conclusion

22. For the foregoing reasons, the Prosecution submits that Mr Gbagbo should remain in detention. His detention remains compatible with his health and

³² Request, para. 24.

³³ Request, paras. 25-73.

³⁴ See for instance ICC-02/11-01/15-349 recalling the procedural history of medical reports related to Mr Gbagbo's health and citing, among others, the Medical Report on 27 March 2014 (ICC-02/11-01/11-644-Conf-Exp-Anx).

³⁵ See 11th Decision, paras. 18-32.

³⁶ See 11th Decision, paras. 44-46.

necessary under articles 58(1)(b)(i) and (ii) and 60(2). The Defence's unsubstantiated Request should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 30th day of April 2018

At The Hague, The Netherlands